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ALLIANCE INFRASTRUCTURE PROJECTS PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX

IN THE ITAT BANGALORE BENCH 'C'

GEORGE GEORGE K., JM & B. R. BASKARAN, AM.

ITA Nos. 2464 to 2467/Bang/2019

Jul 30, 2021

(2021) 62 CCH 0371 BangTrib

(2021) 190 ITR (Trib) 0012 (Bangalore) (SN)

Legislation Referred to

Section 14A

Case pertains to

Asst. Year 2013-14 to 2016-17

Decision in favour of:

Matter remanded

Income—Expenditure incurred in relation to income not includible in total income—Recording of satisfaction by AO— Assessee is engaged in business of real estate development —Assessee has formed subsidiary companies and partnership firms to execute various projects — Assessee has made investments in above said concerns — Assessee did not make any disallowance as required u/s 14A even though it had received exempt income assessee had made disallowance of round sum u/s 14A — A.O. has computed disallowance u/s 14A read with Rule 8D — CIT(A) confirmed addition made by A.O. — A.R. contended that A.O. has not recorded satisfaction to reject claim of assessee with regard to disallowance u/s 14A and hence, A.O. could not have invoked provisions of Rule 8D for making disallowance — Held, a perusal of assessment order would show that A.O. has discussed applicability of provisions of section 14A by duly considering letters filed by assessee before him — Hence, it is not a case of non-recording of dis-satisfaction over claim made by assessee, Act does not prescribe any particular method for recording satisfaction/dis-satisfaction — Hence satisfaction/dissatisfaction of AO over claim made by assessee should be inferred from observations made by him in assessment order — Assessing officer has shown that he was not satisfied with claim of assessee —Assessee's ground dismissed .

Held

A perusal of assessment order would show that the A.O. has discussed the applicability of the provisions of section 14A by duly considering the letters filed by the assessee before him. Hence, it is not a case of non-recording of dis-satisfaction over the claim made by the assessee, Act does not prescribe any particular method for recording satisfaction / dis-satisfaction. Hence the satisfaction/dissatisfaction of the AO over the claim made by the assessee should be inferred from the observations made by him in the assessment order. Assessing officer has shown that he was not satisfied with the claim of the assessee.

(para 8)

Conclusion

Income Tax Act does not prescribe any particular method for recording satisfaction / dis-satisfaction, it should be inferred from the observations made by AO in the assessment order.

In favour of

Revenue

Income—Expenditure incurred in relation to income not includible in total income— Assessee is engaged in business of real estate development — It has formed subsidiary companies and partnership firms to execute various projects — Assessee has made investments in above said concerns — Assessee did not make any disallowance as required u/s 14A even though it had received exempt income assessee had made disallowance of round sum u/s 14A — A.O. has computed disallowance u/s 14A read with Rule 8DCIT(A) confirmed addition made by A.O. — Held, Assessee has floated many sister concerns and there has been transfer of funds (interest free) between sister concerns — Hence assessee has shown both interest free funds received from sister concerns and also advances given to other sister concerns in above statement — A perusal of above statement would show that own funds and interest free funds available with assessee are in excess of value of investments in subsidiaries/related concerns and interest free advances given by assessee — Hence, as per CIT Vs. Micro Labs Ltd. (Income Tax Appeal No.471/2015), no disallowance out of interest expenditure is called for under Rule 8D(2)(ii) — Applying ratio laid down by Karnataka High Court no disallowance out of interest expenditure is called for under rule 8D(2)(ii) — Accordingly, order passed by CIT(A) on this issue is set aside and A.O. is directed to delete disallowance — With regard to disallowance made out of "other expenses" under Rule 8D(2)(iii), it is case of assessee that it has received exempt income only from one/two partnership concerns — Accordingly, it was submitted that, for purpose of computing average value of investments, only those investments which have yielded exempt income should be considered — Accordingly, order passed by

CIT(A) is set aside on this issue in all years under consideration and direct A.O. to recompute disallowances under Rule 8D(2)(iii) by considering only those investments, which have yielded exempt income for purpose of computing average value of investments — Matter remanded.

Held

Assessee has floated many sister concerns and there has been transfer of funds (interest free) between the sister concerns. Hence the assessee has shown both interest free funds received from the sister concerns and also advances given to other sister concerns in the above statement. A perusal of the above statement would show that the own funds and interest free funds available with the assessee are in excess of the value of investments in subsidiaries/related concerns and interest free advances given by the assessee. Hence, as per CIT Vs. Micro Labs Ltd. (Income Tax Appeal No.471/2015), no disallowance out of interest expenditure is called for under Rule 8D(2)(ii).

(para 8)

Applying the ratio laid down by Karnataka High Court no disallowance out of interest expenditure is called for under rule 8D(2)(ii). Accordingly, order passed by CIT(A) on this issue is set aside and A.O. is directed to delete the disallowance.

(para 9)

With regard to the disallowance made out of "other expenses" under Rule 8D(2)(iii), it is the case of the assessee that it has received exempt income only from one/two partnership concerns. Accordingly, it was submitted that, for the purpose of computing average value of investments, only those investments which have yielded exempt income should be considered. Accordingly, order passed by CIT(A) is set aside on this issue in all the years under consideration and direct the A.O. to recompute disallowances under Rule 8D(2)(iii) by considering only those investments, which have yielded exempt income for the purpose of computing average value of investments.

(para 10)

Conclusion

Own funds and interest free funds available with the assessee are in excess of the value of investments in subsidiaries/related concerns and interest free advances given by the assessee hence, no disallowance out of interest expenditure is called for under Rule 8D(2)(ii).

In favour of

Matter remanded

Cases Referred to

Counsel appeared:

Suman Lunkar, A.R for the Appellant.: Pradeep Kumar, D.R for the Respondent

ORDER

PERBENCH:

1. All the appeals filed by the assessee are directed against the common order dated 30.9.2019 passed by Ld. CIT(A)-11, Bengaluru and they relate to the assessment years 2013-14 to 2016-17. The common issue urged in all the appeals relate to disallowance made by the A.O. u/s 14A of the Income-tax Act,1961 ['the Act' for short] which has been confirmed by Ld. CIT(A). All the appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. The facts relating to the issue are stated in brief. The assessee is engaged in the business of real estate development. It has formed subsidiary companies and partnership firms to execute various projects. Accordingly, the assessee has made investments in the above said concerns. In all the four years under consideration, the assessee has received "share income from partnership firm" as detailed below:-

For A.Y. 2013-14	- 12.34 crores
For A.Y. 2014-15	- 12.95 crores
For A.Y. 2015-16	- 12.22 crores
For A.Y. 2016-17	- 10.82 crores

(Note:-- The above said figures have been collated by us from the Balance sheet filed in the paper book. There is slight variation in amount of share income shown in ITR forms).

3. However, the assessee did not make any disallowance as required u/s 14A of the Income-tax Act,1961 ['the Act' for short], even though it had received exempt income in assessment years 2013-14 TO 2015-16. However, in AY 2016-17, the assessee had made disallowance of round sum of Rs.5.00 lakhs u/s 14A of the Act. Hence the A.O. has computed the disallowance u/s 14A of the Act read with Rule 8D as under:

Assessment year	Interest disallowance under Rule 8D(2)(ii)	Expenditure disallowance under Rule 8D(2)(iii)
2013-14	61,05,257	34,41,876
2014-15	3,90,418	43,04,968
2015-16	--	52,92,691

2016-17	--	53,31,451*
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(*After deducting Rs.5.00 lakhs, being the disallowance made by the assessee)

The Ld. CIT(A) confirmed the addition made by the A.O. Hence the assessee has filed all these appeals challenging the decision rendered by Ld CIT(A) on the impugned issue.

4. The Ld. A.R. submitted that the A.O. has made disallowance out of interest expenditure u/r 8D(2)(ii) in assessment year 2013-14 & 2014-15 only. The AO has also made disallowance out of expenses u/r 8D(2)(iii) in all the four years. With regard to the interest disallowance, the Ld. A.R. submitted that the own funds and interest free funds available with the assessee in AY 2013-14 and 2014-15 are in excess of the value of investment and interest free advances given by the assessee. Accordingly, the Ld. A.R. submitted that no disallowance out of interest expenditure is called for, since the presumption is that the interest free funds/own funds have been used to make investments. The Ld. A.R. also submitted that the assessee had taken loan in the earlier years for specific purposes and not during the year under consideration.

5. The Ld. A.R. also contended that the A.O. has not recorded satisfaction to reject the claim of the assessee with regard to the disallowance u/s 14A of the Act and hence, the A.O. could not have invoked provisions of Rule 8D for making disallowance.

6. The Ld. A.R. also submitted that the A.O. has considered value of all investments for working out average value of investment, whereas, the assessee has received exempt income only from one/two partnership firms in all these years. Accordingly, by placing her reliance on the decision rendered by Delhi Special bench of ITAT in the case of ACIT Vs. Vireet Investments Pvt. Ltd. (2017) 82 Taxmann.com 415, the Ld. A.R. submitted that only those investments, which have yielded exempt income should be considered for computing average value of investments.

7. On the contrary, the Ld. D.R. placed reliance on the order passed by tax authorities.

8. We have heard rival contentions and perused the record. We shall first address the legal issue urged by the assessee, viz., the A.O. has not recorded satisfaction before invoking the provisions of Rule 8D. However, a perusal of assessment order would show that the A.O. has discussed the applicability of the provisions of section 14A of the Act by duly considering the letters filed by the assessee before him. Hence, it is not a case of non-recording of dis-satisfaction over the claim made by the assessee, as contended by Ld A.R. It is pertinent to mention here that the Act does not prescribe any particular method for recording satisfaction / dis-satisfaction. Hence the satisfaction/dissatisfaction of the AO over the claim made by the assessee should be inferred from the observations made by him in the assessment order. We find support for this proposition from the decision rendered by Hon'ble Supreme Court in the case of MAK Data (P) Ltd,(2014)(1 SCC 674) wherein it was observed as under:-

"10. The AO has to satisfy whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the AO is not required to record his satisfaction in a particular manner or reduce it into writing."

Even though, the above said observation was made in the context of penalty levied u/s 271(1)(c) of the Act, yet the said ratio, in our view, could equally be applied to sec.14A of the Act in the matter of recording of "satisfaction/dissatisfaction". In the instant cases, we have earlier noticed that the A.O. has made detailed discussion in all the years under consideration on the applicability of sec.14A of the Act, that too, after considering the letter filed by the assessee. Meaning thereby, the assessing officer has

shown that he was not satisfied with the claim of the assessee. Accordingly, we do not find any merit on the legal issue urged by the assessee. Accordingly, we reject the legal ground relating to recording of satisfaction/dis-satisfaction by the A.O.

9. With regard to the disallowance made under Rule 8D(2)(ii) in assessment year 2013-14 & 2014-15, the assessee has furnished the details of own funds and interest free funds available with it as under, which has been culled out from the financial statements of all the years under consideration:-

<i>Particulars</i>	<i>Assessment year 2013-14</i>	<i>Assessment year 2014-15</i>
<i>Share Capital</i>	<i>57,049,000.00</i>	<i>57,049,000.00</i>
<i>Reserves & Surplus</i>	<i>90,909,586.00</i>	<i>196,658,626.00</i>
<i>Interest fees Advance</i>	<i>2,046,156,085.00</i>	<i>2,689,701,585.00</i>
<i>from Group companies</i>		
<i>Total (a)</i>	<i>2,194,114,671.00</i>	<i>2,943,409,211.00</i>
<i>Particulars</i>	<i>Assessment year 2013-14</i>	<i>Assessment year 2014-15</i>
<i>Investments in</i>	<i>752,024,414.00</i>	<i>969,963,162.00</i>
<i>Subsidiaries/related</i>		
<i>concerns</i>		
<i>Interest free advances</i>	<i>1,299,506,011.00</i>	<i>1,833,113,842.00</i>
<i>given</i>		
<i>Total (b)</i>	<i>2,051,530,425.00</i>	<i>2,803,077,004.00</i>
<i>Surplus Funds (a-b)=c</i>	<i>142,584,246.00</i>	<i>140,332,207.00</i>

We have observed earlier that the assessee has floated many sister concerns and there has been transfer of funds (interest free) between the sister concerns. Hence the assessee has shown both interest free funds received from the sister concerns and also advances given to other sister concerns in the above statement. A perusal of the above statement would show that the own funds and interest free funds available with the assessee are in excess of the value of investments in subsidiaries/related concerns and interest free advances given by the assessee. Hence, as per the decision rendered by Hon'ble High Court of Karnataka in the case of CIT Vs. Micro Labs Ltd. (Income Tax Appeal No.471/2015 dated 11.3.2016), no disallowance out of interest expenditure is called for under Rule 8D(2)(ii). For the sake of convenience, we extract below the operative portion of the order passed by Hon'ble Karnataka High Court:

"40. We have heard the rival submissions. A copy of the availability of funds and investments made was filed before us which is at pages 38 to 42 of the assessee's paper book and the same is enclosed as ANNEXURE-III to this order. It is clear from the said statement that the availability of profit, share capital and reserves & surplus was much more than investments made by the assessee which could yield tax free income.

41. The Hon'ble Bombay High Court in Reliance Utilities & Power Ltd. 313ITR 340 (Bom) has held that where the interest free funds far exceed the value of investments, it should be considered that investments have been made out of interest free funds and no disallowance u/s. 14A towards any interest expenditure can be made. This view was again confirmed by the Hon'ble Bombay High Court in CIT v. HDFC Bank Ltd., ITA No.330 of 2012, judgment dated 23.7.14, wherein it was held that when investments are made out of common pool of funds and non-interest bearing funds were more than the investments in tax free securities, no disallowance of interest expenditure u/s. 14A can be made.

42. In the light of above said decisions, we are of the view that disallowance of interest expenses in the present case of Rs.49,42,473 made under Rule 8D(2)(ii) of the I.T. Rules should be deleted. We order accordingly."

Thereafter, it was held by Hon'ble Karnataka High Court as under:-

"The aforesaid shows that the Tribunal has followed a decision of the Bombay High Court in the case of CIT v. HDFC Bank Ltd. [2014] 366ITR 505/226 Taxman 132 (Mag.)/49 taxmann.com 335 . When the issue is already covered by a decision of the High Court of Bombay with which we concur, we do not find any substantial question of law would arise for consideration as canvassed."

Accordingly, applying the ratio laid down by Hon'ble Karnataka High Court in the case of Micro Labs Ltd. (supra), we hold that no disallowance out of interest expenditure is called for under rule 8D(2)(ii). Accordingly, we set aside the order passed by Ld. CIT(A) on this issue in assessment years 2013-14 & 2014-15 and direct the A.O. to delete the disallowance.

10. With regard to the disallowance made out of "other expenses" under Rule 8D(2)(iii), it is the case of the assessee that it has received exempt income only from one/two partnership concerns. Accordingly, it was submitted that, for the purpose of computing average value of investments, only those investments which have yielded exempt income should be considered. This contention of the assessee gets support from the decision rendered by Delhi Special Bench of ITAT in the case of Vireet Investments Pvt. Ltd. (supra). Accordingly, we set aside the order passed by Ld. CIT(A) on this issue in all the years under consideration and direct the A.O. to recompute disallowances under Rule 8D(2)(iii) by considering only those investments, which have yielded exempt income for the purpose

of computing average value of investments. In case the disallowance computed as per above formula works out to less than Rs.5.00 lakhs in AY 2016-17, then the disallowance shall be made at the amount of Rs.5.00 lakhs voluntarily disallowed by the assessee in that year.

11. In the result, the appeals filed by th assessee are partly

Order pronounced in the open court on 30th July, 2021

Customized Notes

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